



August 2012

# Regulatory Guidance



## **Hiring and Contracting TRU-Carrier Transport of Perishable Goods on California Highways and Railways**

### **Guidance for Brokers, Forwarders, Shippers, Receivers, Carriers and Drivers**

This document explains the requirements in the California Air Resources Board's (ARB) Transport Refrigeration Unit (TRU<sup>1</sup>) Airborne Toxic Control Measure<sup>2</sup> (ATCM) that affect brokers, freight forwarders, shippers, receivers, motor carriers, and their drivers. These requirements were added in the 2011 Amendments, approved by the ARB on October 21, 2011.

#### **Background**

ARB staff investigations have found a greater frequency of noncompliance among carriers hired by brokers, freight forwarders, shippers, and receivers compared to private fleets. Operating TRUs that do not comply with ARB's TRU ATCM in-use engine emissions standards exposes the public to greater potential cancer risk, violates the TRU ATCM, and can result in an unfair economic advantage for noncomplying carriers. To address these issues, ARB amended the TRU ATCM in 2011 to require brokers, freight forwarders, shippers, and receivers to hire, or contract with, only compliant TRU carriers.

These amendments include provisions for: brokers and freight forwarders in section 2477.8; California-based shippers in section 2477.10; California-based receivers in section 2477.11; motor carriers in section 2477.9; and drivers in section 2477.7.

Beginning January 1, 2013, the new requirements for brokers, forwarders, shippers, receivers, motor carriers, and drivers go into effect. This guidance document explains these amendments and what actions are required to comply with them.

#### **1. What are the requirements for brokers and freight forwarders?**

If a broker or freight forwarder arranges, hires, contracts for, or dispatches reefer-equipped trucks, tractor-trailers, shipping containers, or railcars for the transport of perishable goods on California highways or railways, the broker or freight forwarder must:

- A. Require the carriers they hire, or contract with, to dispatch only trucks and trailers equipped with TRUs that comply with ARB's TRU ATCM in-use performance standards; and,
- B. Provide contact information to the carrier so that dispatched drivers can present it to authorized enforcement personnel upon request. Contact information must include the broker's company name, street address, state, and ZIP code and a contact person's name and business phone number. If a broker or forwarder is not involved in arranging the transport of the load, then broker contact information is not required on bills of lading or related documents.

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<sup>1</sup> TRUs are often referred to as reefers. This guidance applies to TRUs and TRU generator sets. When the term TRU is used in this document, it also refers to TRU generators sets, unless otherwise noted.

<sup>2</sup> Title 13, California Code of Regulations, section 2477, et seq. This guidance document is not a regulation. In case of conflict, the regulation shall prevail.

## **2. What are the requirements for California-based shippers?**

If a California-based shipper arranges, hires, contracts for, or dispatches TRU-equipped trucks, tractor-trailers, shipping containers, or railcars for the transport of perishable goods on California highways or railways, the shipper must:

- A. Only dispatch trucks and trailers equipped with TRUs that comply with ARB's TRU ATCM in-use performance standards;
- B. Require the carriers they hire, or contract with, to dispatch only TRUs that comply with the TRU ATCM's in-use performance standards; and
- C. Provide the following information to the carrier so that dispatched drivers can present it to authorized enforcement personnel upon request:
  - a. Shipper's business name and address;
  - b. Receiver's business name and address; and
  - c. Shipper contact information for a person with knowledge of the transport arrangements. The shipper contact information includes the name of the department that arranges shipping with the carrier and their business phone number.

If a shipper hires a broker to make the transport arrangements, the shipper should require the broker to hire compliant TRUs.

## **3. What are the requirements for California-based receivers?**

If a California-based receiver arranges, hires, contracts for, or dispatches TRU-equipped trucks, tractor-trailers, shipping containers, or railcars for the transport of perishable goods on California highways or railways, then the receiver must:

- A. Only dispatch trucks and trailers equipped with TRUs that comply with ARB's TRU ATCM in-use performance standards;
- B. Require the carriers they hire, or contract with, to dispatch only TRUs that comply with the TRU ATCM's in-use performance standards; and
- C. Provide the following information to the carrier so that dispatched drivers can present it to authorized enforcement personnel, upon request:
  - a. Shipper's business name and address;
  - b. Receiver's business name and address; and
  - c. Receiver contact information for a person with knowledge of the transport arrangements. The receiver contact information includes the name of the department that arranges shipping with the carrier and their business phone number.

If a receiver hires a broker to make the transport arrangements, the receiver should require the broker to hire compliant TRUs.

## **4. What are the requirements for motor carriers?**

Motor carriers that dispatch trucks and trailers equipped with TRUs on California highways and railways must:

- A. Only dispatch trucks and trailers equipped with TRUs that comply with ARB's TRU ATCM in-use performance standards;
- B. Provide the following information to the dispatched driver:
  - a. Motor carrier's business name, street address, state, and ZIP code;
  - b. Motor carrier contact person's name and business phone number; and

- c. Information provided by the business entity that hired the motor carrier, as follows: business name, address, contact person or group, and phone number of the business entity that arranged, hired, or contracted for the transport of the perishable goods being hauled. This could be the broker, forwarder, shipper or receiver.

## **5. What are the requirements for drivers?**

Drivers are prohibited from operating TRUs on California highways that do not comply with ARB's TRU ATCM in-use performance standards. A TRU that is capable of being operated is considered to be operating any time it is in California. If the TRU will not be used while in California, it must be appropriately and obviously disabled.<sup>3</sup>

In addition, drivers are required to provide the following information to authorized enforcement personnel upon request:

- A. Driver's license;
- B. Truck or tractor registration;
- C. Trailer registration; and
- D. Bill of lading or freight bill with:
  - a. Origin and destination of freight being transported;
  - b. Shipper business name, street address, state, and ZIP code;
  - c. Receiver business name, street address, state, and ZIP code;
  - d. Motor carrier business name and contact person's name and phone number that dispatched the driver; and
  - e. The company name and contact information for the business entity (e.g. shipper, freight broker, freight forwarder, or receiver) that arranged, hired, or contracted for the transport of the perishable goods being hauled.

## **6. Do the requirements for brokers and freight forwarders apply to those based outside California?**

The requirements apply to any broker or freight forwarder that hires a carrier that will travel on a California highway or railway, regardless of where the broker or freight forwarder is based or conducting business.

## **7. Are brokers, forwarders, shippers and receivers required to inspect TRUs to determine if they are compliant with ARB's TRU ATCM in-use performance standards?**

ARB's TRU ATCM does NOT require brokers, forwarders, shippers, and receivers to inspect TRUs to determine compliance or turn away noncompliant TRUs at docks. However, freight brokers, freight forwarders, shippers, and receivers must take steps to comply with the applicable requirements as discussed above.

## **8. How can a broker, forwarder, shipper, or receiver know which carriers have compliant TRUs?**

Ask carriers to provide proof of compliance. California-based TRUs must be registered on ARBER – ARB's online TRU registration system. TRUs that are based outside of California may voluntarily register in ARBER.<sup>4</sup> Carriers can print the ARBER certification page that identifies the TRU and

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<sup>3</sup> See TRU Advisory 08-09 at [www.arb.ca.gov/diesel/tru/tru/advisories.htm](http://www.arb.ca.gov/diesel/tru/tru/advisories.htm)

<sup>4</sup> <http://www.arb.ca.gov/arber/arber.htm>

shows its compliance status and compliant-through date. Carriers should use a current certification-page printout as proof of compliance for the TRU that will be used.

ARB staff also has a publicly available database of 100 Percent-Compliant Carriers, based on ARBER registration data. The database is continuously updated. ARBER users can identify compliant carriers by entering a motor carrier number or company name, or download a list of all 100 percent-compliant carriers, or a narrowed list by city, county, or state/province.

Brokers, forwarders, shippers, and receivers may use this tool as a starting place in conjunction with the recommendations listed below. But businesses must make sure they are using the most current ARBER list when they hire or contract a carrier. ARB staff is committed to making this 100 percent-compliant carrier list as useful as possible. Comments and suggestions to ARB are welcome.

Alternatively, brokers, forwarders, shippers, and receivers could agree to pool their resources and establish their own clearinghouse to list carriers that have demonstrated compliance with the TRU ATCM. Such demonstrations could include providing a complete set of current ARBER certification pages for all of the carrier's TRUs that will be used on California highways or railways.

#### **9. What happens when a violation is found?**

When noncompliant equipment is discovered, ARB may cite the carrier, broker, freight forwarder, shipper, receiver, and/or driver. In resolving violations, ARB will consider the relevant circumstances, including how carefully the hiring party chose its carrier.

#### **10. How can a carrier make sure they are on the 100 Percent Compliant Carriers list?**

The 100 Percent Compliant Carrier List is based on TRUs that are registered in ARBER. Therefore, the first step is to register compliant units in ARBER.

The registration information must be complete and correct. ARBER currently checks this information before it issues a compliance certification and shows a "compliant until" date. Therefore, the carrier should be careful to enter complete, accurate registration information.

In addition, when compliance information changes, the carrier must update ARBER as soon as possible so that ARBER uses current information to determine compliance status. For example, when an owner takes steps to bring a unit into compliance, they need to update ARBER to reflect that change.

#### **11. What are some strategies that a broker, freight forwarder, shipper, or receiver might use to make sure they only hire compliant carriers?**

- A. Businesses could consider sending an annual notice to carriers that only those on ARB's 100 Percent-Compliant List will be considered for hire or contract. This notice could tell carriers to ensure that they are compliant with ARB's TRU ATCM in-use performance standards, and maintain complete, updated ARBER registration data in order to be placed on ARB's 100 Percent-Compliant list.
- B. Businesses could include contract language in agreements between the shipper and broker or forwarder, or receiver and broker or forwarder that clearly requires only ARB-compliant TRUs to be dispatched on California highways and railways. Possible contract language to consider for this purpose follows:

**"Broker, forwarder, or its agent certifies that any TRU equipment hired or furnished will be in compliance with the in-use requirements of California's TRU regulations."**

ARB recommends highlighted or bold contract language and a space provided next to this language for the broker, forwarder, or his representative to sign, acknowledging this requirement and certifying that they will only dispatch compliant equipment on California highways.

- C. When a broker, forwarder, shipper, or receiver advertises an available perishable goods load, they should specify that the load requiring refrigerated transport equipment will travel on California highways or railways and the TRU used for this load must be ARB-compliant. If posted on an on-line load board<sup>5</sup> the equipment specification should include “ARB-Compliant TRU” so that carriers know up front that TRUs must be compliant with ARB’s TRU ATCM in-use standards.
- D. Document the steps during hiring or contract negotiations with the carrier showing that the carrier was notified that an ARB-compliant TRU is required and that the carrier confirmed the contractual obligation to only dispatch ARB-compliant TRUs on California highways or railways.
  - a. Include contract language that clearly requires that only ARB-compliant TRUs be dispatched on California highways and railways. Possible contract language to consider for this purpose follows:

**“Carrier or its agent certifies that any TRU equipment furnished will be in compliance with the in-use requirements of California’s TRU regulations.”**

This contract language should be highlighted or bolded and a space provided for the carrier’s representative or its agent’s signature acknowledging this requirement and certifying that only ARB-compliant equipment will be dispatched on California highways. The bill of lading needs to include this language and certification.
  - b. The carrier may provide the broker, forwarder, shipper, or receiver with the ARBER certification page for the TRU, with its ARB Identification Number (IDN) clearly indicated, to show that the dispatched unit is compliant. This document may be used to show that there was a reasonable expectation that only certified-compliant TRU equipment would be used for a specific job, if the specific IDN is called out in the contract or bill of lading.
- E. If a carrier is found to have violated the requirement to dispatch only ARB-compliant TRUs on California highways or railways, the broker, forwarder, shipper or receiver should take preventative steps to ensure no further hiring of that noncompliant carrier will happen:
  - a. The broker, freight forwarder, shipper or receiver that hired or contracted with that carrier should ensure they do not hire or contract with that carrier until the carrier can demonstrate that it is in full compliance with ARB’s TRU ATCM in-use performance standards.
  - b. The broker, forwarder, shipper, or receiver that hired the carrier should also evaluate whether their negotiating processes and practices are sufficient to ensure they do not hire or contract noncompliant carriers.
  - c. If a shipper or receiver hires a broker or forwarder that in turn hired a carrier that dispatched a noncompliant TRU, the shipper or receiver should also ensure they do not hire or contract with that broker or forwarder until the broker or forwarder can demonstrate that it has corrected its negotiating processes and practices sufficiently to ensure they will not hire or contract noncompliant carriers in the future.

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<sup>5</sup> As an example, see 123LOADBOARD at: <http://www.123loadboard.com>

**12. Are private fleets that own TRUs and distribution centers required to meet the requirements that apply to shippers and receivers?**

Yes. Private fleets must comply with ARB's TRU ATCM in-use performance standards. If a private fleet hires or contracts with a motor carrier to transport perishable goods on California highways or railways then the shipper or receiver requirements listed in items 2 and 3, above, also apply to the private fleet.

**13. I am a carrier that owns TRUs that are all less than seven years old. These units have not passed a compliance deadline, so they are all compliant at this time; however, my company is not listed on the 100 Percent Compliance list. What do I need to do?**

See question and answer number 10, above.

**14. As a carrier, I am concerned that confidential information about my fleet will be released to my competitors. What information will be available to the public about my fleet?**

The 100 Percent Compliant Carrier List only lists carriers that have all compliant TRUs registered in ARBER. The "Check TRU Compliance Status" button on the TRU website only provides compliance status if a person knows the ARB Identification number, the vehicle/trailer VIN or license plate number, the railcar reporting mark, or the TRU gen set BIC code.

**15. Who is authorized to inspect TRUs and where will these inspections take place?**

ARB Enforcement Division staff will inspect TRUs throughout California: at border crossings, distribution centers, scales, roadside inspection stations, agriculture inspection stations, ports, railyards, and intermodal facilities. In addition, the Port of LA Police Department is authorized to inspect TRUs and issue citations under a memorandum of understanding with ARB. Similarly, several local air districts may inspect TRUs and issue citations at locations in their district.

**16. Will this guidance be amended?**

These guidelines may be revised at any time. When a revision is published, a notice of availability of modified guidelines will be emailed to the TRU List Serve and the most current version will be posted on the TRU Website. Brokers, forwarders, shippers, receivers, carriers, and drivers should sign up for the TRU List Serve and regularly check the TRU Website to make sure they have the most current version of these guidelines.

TRU List Serve: [http://www.arb.ca.gov/listserv/listserv\\_ind.php?listname=tru](http://www.arb.ca.gov/listserv/listserv_ind.php?listname=tru)

**For more information**

To obtain a copy of the regulation or other related compliance assistance documents, visit the TRU website at <http://www.arb.ca.gov/diesel/tru/tru.htm>. Additional questions may be addressed by calling the toll-free TRU Help Line at 1-888-878-2826 (1-888-TRU-ATCM). If you require this document in an alternative format or another language, please call 1-888-878-2826 or email [tru@arb.ca.gov](mailto:tru@arb.ca.gov). TTY/TDD/Speech users may dial 711 for a California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma por favor llame al 1-888-878-2826 o contáctenos por correo electrónico a [tru@arb.ca.gov](mailto:tru@arb.ca.gov). Para Servicios de Relevé de California (CRS) o para el uso de teléfonos TTY, marquen al 711.

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